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Justice minister supports government plans for mandatory mediation

Separating couples involved in property or child disputes should speak to mediators before going to court, says Simon Hughes

Owen Bowcott

The Guardian, Tuesday 7 January 2014 12.04 EST



Simon Hughes says he wants couples to separate in the least damaging way for everyone involved, especially children.
Photograph: Voisin/Phanie/Rex Features

The new justice minister, Simon Hughes, whose departmental responsibilities include family law, has backed government plans to make mediation mandatory for separating couples.

The requirement – ensuring that those involved in disputes about property or agreeing child contact times speak to professional mediators before going to court – is contained

in the children and families bill. It is expected to come into force in April.

Mediation involves couples holding discussions, co-ordinated by a certified mediator, in an initial attempt to reach an agreement that both are prepared to accept before having to enter into a more confrontational and expensive dispute through the courts. Couples who agree on a settlement can ask a court to make it into a legally binding, enforceable order.

Hughes said: "Mediation works and we are committed to making sure that more people make use of it, rather than go through the confrontational and stressful experience of going to court.

"When people separate we want them to do it in the least damaging way for everyone involved, especially children. That is why we want them to use the excellent mediation services available to agree a way forward, rather than have one forced upon them."

Mediation practitioners have reported a sharp fall in the number of couples using their services, after government cuts to legal aid for family disputes. The introduction of a mandatory referral to mediation is expected to boost use.

Under the new powers, anyone divorcing or separating who wants to apply for a court order about a child or financial matter must first attend a mediation information and assessment meeting. There will be exemptions in certain cases, such as where there is evidence of domestic violence.

The Ministry of Justice says the average legal aid cost of resolving a private family dispute following a relationship breakdown is about £500 per couple through mediation – compared with £4,000 per person for issues settled through the courts. The average time for a mediated case is 110 days compared with 435 days for non-mediated cases.

Among lawyers, the first working day in January is known as divorce day because of the surge of inquiries lawyers received after the Christmas break.

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HOUSE BILL 1353

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Upthegrove and Fey

Read first time 01/24/13. Referred to Committee on Judiciary.

1 AN ACT Relating to mediation in family law cases involving
2 children; and amending RCW 26.09.015.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 Sec. 1. RCW 26.09.015 and 2008 c 6 s 1044 are each amended to read
5 as follows:

6 (1) In any proceeding under this chapter, other than a proceeding
7 under subsection (2) of this section, the matter may be set for
8 mediation of the contested issues before or concurrent with the setting
9 of the matter for hearing. The purpose of the mediation proceeding
10 shall be to reduce acrimony which may exist between the parties ((and
11 to develop an agreement assuring the child's close and continuing
12 contact with both parents after the marriage or the domestic
13 partnership is dissolved)). The mediator shall use his or her best
14 efforts to effect a settlement of the dispute.

15 ~~((2)(a) Each superior court may make available a mediator. The~~
16 ~~court shall use the most cost-effective mediation services that are~~
17 ~~readily available unless there is good cause to access alternative~~
18 ~~providers. The mediator may be a member of the professional staff of~~
19 ~~a family court or mental health services agency, or may be any other~~

1 ~~person or agency designated by the court. In order to provide~~
2 ~~mediation services, the court is not required to institute a family~~
3 ~~court.~~

4 ~~(b)) (2)(a)~~ In any proceeding involving issues relating to
5 residential time or other matters governed by a parenting plan, the
6 matter ~~((may)) must~~ be ~~((set)) scheduled~~ for mediation of the contested
7 issues ~~((before or concurrent with the setting of the matter for~~
8 ~~hearing)) within sixty to ninety days after service and filing of~~
9 ~~responsive pleadings is completed. The purpose of the mediation~~
10 ~~proceeding shall be to reduce acrimony which may exist between the~~
11 ~~parties and to develop an agreement assuring the child's close and~~
12 ~~continuing contact with both parents after the marriage or the domestic~~
13 ~~partnership is dissolved. The mediator shall use his or her best~~
14 ~~efforts to effect a settlement of the dispute.~~

15 (b) Each superior court shall establish a program and rules to
16 provide for early mediation of cases involving issues relating to
17 residential time or other matters governed by a parenting plan. Such
18 rules must address:

19 (i) The number and length of mediation sessions, which in no case
20 may be less than one mediation session, and additional sessions as are
21 deemed appropriate by the mediator or the parties. Each mediation
22 session must last approximately two to three hours unless mediated
23 issues are resolved prior to that time;

24 (ii) Mandatory expertise and training for mediators;

25 (iii) Limitation of the mediation program to issues relating to
26 residential time or other matters governed by a parenting plan;

27 (iv) Standards for determining which issues should be referred to
28 mediation and timelines for mediation to be concluded; and

29 (v) Excusal from mediation if the court determines that an
30 impediment to mediation exists, including family violence, mental or
31 cognitive impairment, alcohol abuse or chemical dependency, or other
32 circumstances that may render mediation inappropriate or that would
33 unreasonably interfere with the mediation process.

34 (3)(a) Each superior court may make available a mediator. The
35 court shall use the most cost-effective mediation services that are
36 readily available unless there is good cause to access alternative
37 providers. The mediator may be a member of the professional staff of
38 a family court or mental health services agency, or may be any other

1 person or agency designated by the court. In order to provide
2 mediation services, the court is not required to institute a family
3 court.

4 (b) Counties may, and to the extent state funding is provided
5 therefor counties shall, provide both predecree and postdecree
6 mediation at reduced or waived fee to the parties within one year of
7 the filing of the dissolution petition.

8 ((+3+)) (4)(a) Mediation proceedings under this chapter shall be
9 governed in all respects by chapter 7.07 RCW, except as follows:

10 (i) Mediation communications in postdecree mediations mandated by
11 a parenting plan are admissible in subsequent proceedings for the
12 limited purpose of proving:

13 (A) Abuse, neglect, abandonment, exploitation, or unlawful
14 harassment as defined in RCW 9A.46.020(1), of a child;

15 (B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of
16 a family or household member as defined in RCW 26.50.010(2); or

17 (C) That a parent used or frustrated the dispute resolution process
18 without good reason for purposes of RCW 26.09.184(4)(d).

19 (ii) If a postdecree mediation-arbitration proceeding is required
20 pursuant to a parenting plan and the same person acts as both mediator
21 and arbitrator, mediation communications in the mediation phase of such
22 a proceeding may be admitted during the arbitration phase, and shall be
23 admissible in the judicial review of such a proceeding under RCW
24 26.09.184(4)(e) to the extent necessary for such review to be
25 effective.

26 (b) None of the exceptions under (a)(i) and (ii) of this subsection
27 shall subject a mediator to compulsory process to testify except by
28 court order for good cause shown, taking into consideration the need
29 for the mediator's testimony and the interest in the mediator
30 maintaining an appearance of impartiality. If a mediation
31 communication is not privileged under (a)(i) of this subsection or that
32 portion of (a)(ii) of this subsection pertaining to judicial review,
33 only the portion of the communication necessary for the application of
34 the exception may be admitted, and such admission of evidence shall not
35 render any other mediation communication discoverable or admissible
36 except as may be provided in chapter 7.07 RCW.

37 ((+4+)) (5) The mediator shall assess the needs and interests of

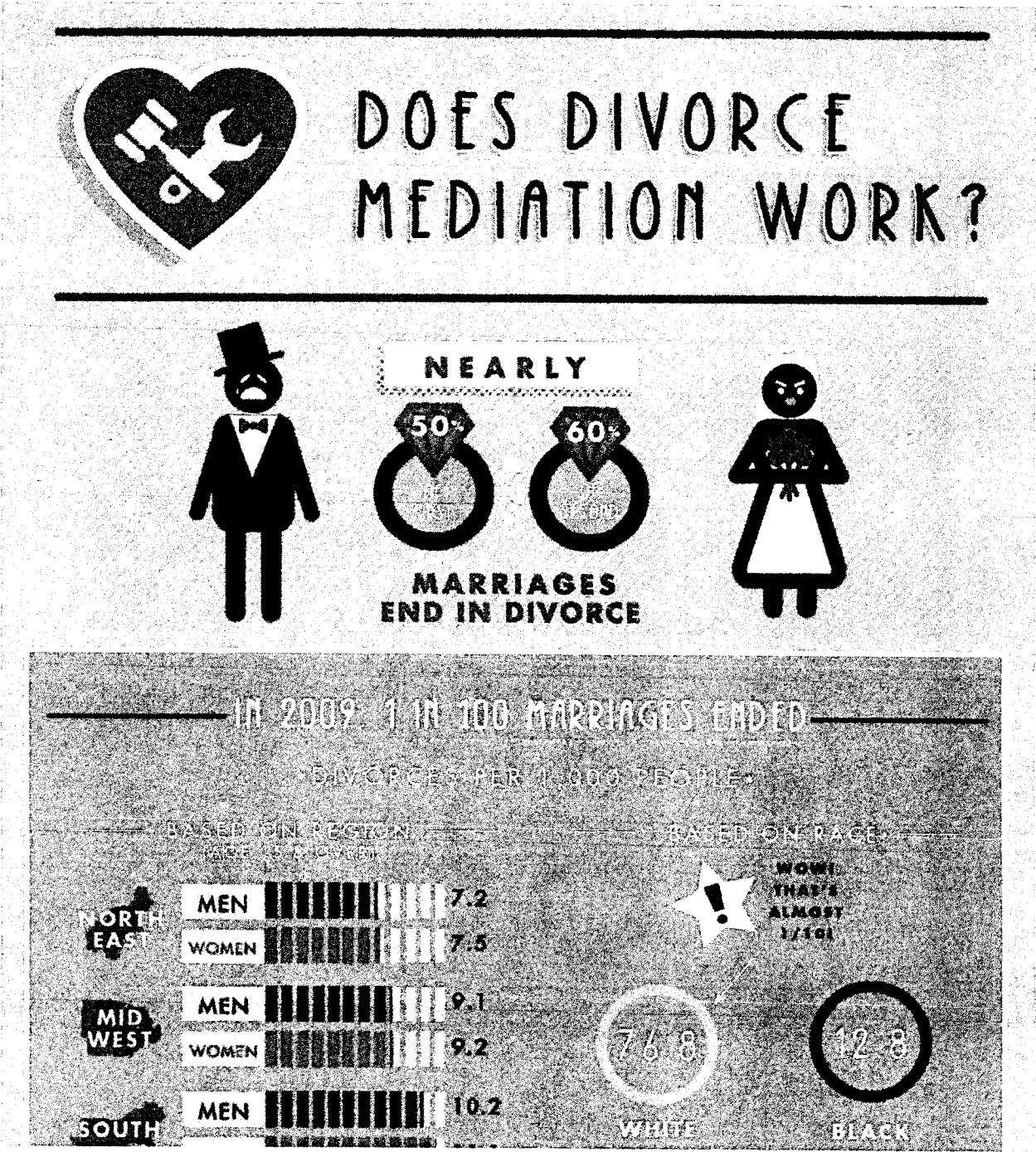
1 the child or children involved in the controversy and may interview the
2 child or children if the mediator deems such interview appropriate or
3 necessary.

4 ((+5+)) (6) Any agreement reached by the parties as a result of
5 mediation shall be reported to the court and to counsel for the parties
6 by the mediator on the day set for mediation or any time thereafter
7 designated by the court.

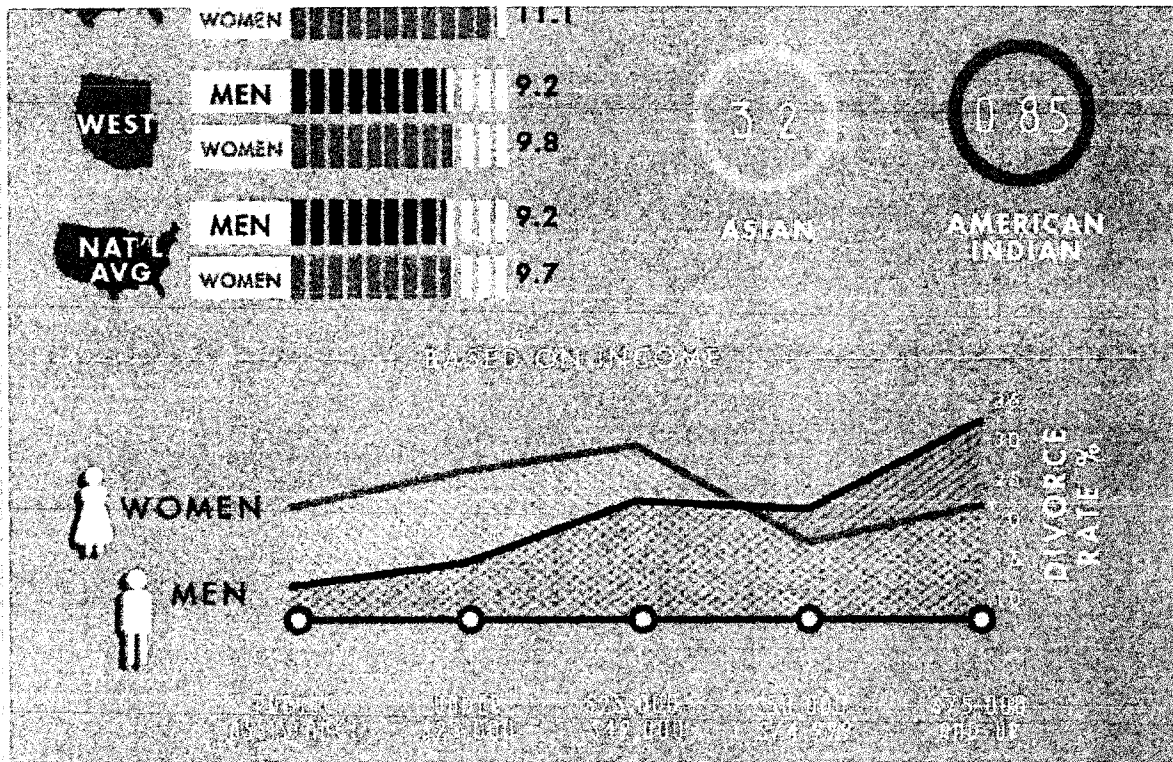
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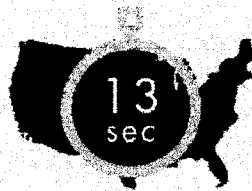
Does Divorce Mediation Work?



OLS



In America, a
 divorce occurs every



..many of which will
 be settled with
MEDIATION

CORE MEDIATION ISSUES



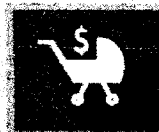
DISTRIBUTION
OF PROPERTY



RETIREMENT



CUSTODY AND
PARENTING TIME

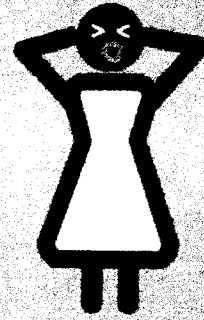
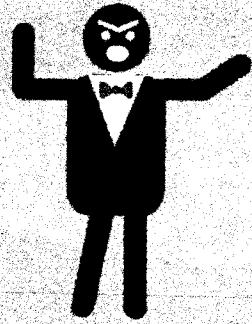


CHILD SUPPORT



TAXES

WHY CHOOSE MEDIATION?



MEDIATION

LITIGATION

\$300/hour

\$300-\$350

\$1800-\$3800

**TOTAL
\$2,000-\$5000**

**\$20,000
PER PERSON**

MEDIATION

LITIGATION

**3-6
MONTHS**

**AVERAGE
2
YEARS**

MEDIATION

LITIGATION

80%

40%

MEDIATION

LITIGATION

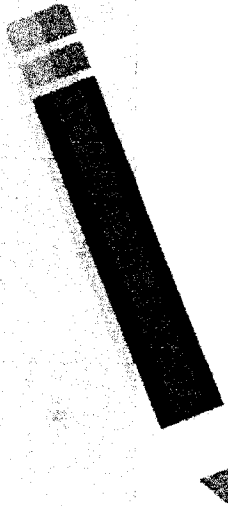


BUT

IF YOU DO NOT WANT TO GO TO COURT, YOU SHOULD CONSIDER MEDIATION. IT IS A PRIVATE AND CONFIDENTIAL PROCESS THAT CAN HELP YOU AND YOUR SPouse Reach A Settlement Without The Need For A Trial. IT IS A COST-EFFECTIVE AND QUICK WAY TO RESOLVE YOUR DISPUTES. IT IS A PROCESS THAT IS CONTROLLED BY YOU AND YOUR SPouse, NOT A JUDGE. IT IS A PROCESS THAT CAN HELP YOU AND YOUR SPouse Reach A Settlement Without The Need For A Trial. IT IS A COST-EFFECTIVE AND QUICK WAY TO RESOLVE YOUR DISPUTES. IT IS A PROCESS THAT IS CONTROLLED BY YOU AND YOUR SPouse, NOT A JUDGE.



MEDIATION IS FOR YOU IF:



- | | |
|--|---|
| ✓ DECISION TO
DIVORCE IS MUTUAL | ✓ YOUR SPOUSE HASN'T
LIED TO YOU ABOUT
ANYTHING IMPORTANT |
| ✓ YOU ARE NOT
EASILY INTIMIDATED
BY YOUR SPOUSE | ✓ YOU BOTH
UNDERSTAND YOUR
FINANCIAL SITUATION |
| ✓ YOU WOULD LIKE TO
STAY ON DECENT
TERMS | ✓ YOU HAVE NO DESIRE
TO REVIVE MARRIAGE |
| ✓ YOU CAN DISAGREE
WITH YOUR SPOUSE
IN A CIVIL WAY | ✓ PHYSICAL VIOLENCE
IS NOT AN ISSUE IN
YOUR RELATIONSHIP |

BROUGHT TO YOU BY:

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SOURCES

1. American Bar Association, *Divorce Mediation*, 1/1/2013, <http://www.abanet.org/divorce/mediation/>

2. American Bar Association, *Divorce Mediation*, 1/1/2013, <http://www.abanet.org/divorce/mediation/>

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6. American Bar Association, *Divorce Mediation*, 1/1/2013, <http://www.abanet.org/divorce/mediation/>

7. American Bar Association, *Divorce Mediation*, 1/1/2013, <http://www.abanet.org/divorce/mediation/>

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\$75,000:Men: 32.6 Women:23.4

With nearly 1/10 white marriages ending in 2009:
Based on race:[2]
[divorce per thousand by race]
White: Men:77.4 Women:76.1
Black: Men: 12.5 Women: 13.1
American Indian: Men: .9 Women: .8
Asian: Men:2.6 Women: 3.8

In total there's a divorce in America every 13 seconds.[6]
Many of those divorces will be settled with mediation.

Core Mediation Issues:[3]
1.) Distribution of property
2.) Child Custody and Parenting Time
3.) Child Support/Maintenance
4.) Retirement
5.) Taxes

So does mediation work?

Mediation produces agreement in 50-80% of cases.[4]

Including those that are :
Court referred
Privately placed
Voluntary
Mandatory
Involving domestic abuse
Involving Intense marital conflict

Profile: Mediators

Traits of good mediators:

Humanity:

Humor, optimism, empathy, sympathy, friendliness.

Mediators can't be robots.

Intelligence

Quickly grasp complex issues, shift tactics rapidly.

This should be about your problem, not a mediator with a problem understanding you.

Professional

Prepared, controls own feelings, neutral, hard worker.

Imagine coming to an agreement with three warring parties.

Qualifications:

Commonly:

Bachelors in psychology, social work, or law

J.D's and extra courses in child psychology

State, Local, County Court, continuing education, and ACR (Association for Conflict Resolution) training.

It's a lot cheaper than litigation:

Mediation: \$300 hour for mediation time[5]

\$1800-\$3800 document preparation

Total: \$2,000-\$5000

vs.

Litigation: \$300-\$350/hr each

Total: Avg. \$20,000 per person

It takes a lot less time:

Mediation: Average 3-6 months[5]

Litigation: Average 2 years

It leads to better child support agreements:

Mediation: 80% voluntary compliance with child support[5]

Litigation: 40% voluntary compliance with child support

It's confidential:[5]

Mediation: Financial info, discussions and decisions confidential.

Litigation: Becomes part of the public record. Hearings open to public.

Note: And it's less adversarial.

But if it doesn't work you have to start from scratch.

It's up to you, but for many it's worth a shot.

Mediation checklist

Mediation is for you if:

Decision for divorce is mutual

You have no desire to revive marriage

You would like to stay on decent terms with spouse

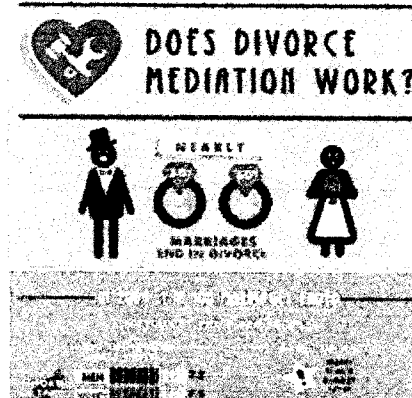
You both understand your financial situation

Your spouse hasn't lied to you about anything important

You can disagree with your spouse in a civil way

You are not easily intimidated by your spouse

Physical violence is not an issue in your relationship



citations:

1. <http://www.divorce.usu.edu/files/uploads/Lesson3.pdf>
2. <http://www.census.gov/prod/2011pubs/acs-13.pdf>
3. <http://www.mediate.com/articles/jamesb1.cfm>
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